

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RICHARD BURLEY,

Petitioner,

Criminal No. 04-80728

Civil No. 08-14197

vs.

HON. GEORGE CARAM STEEH

UNITED STATES OF AMERICA,

Respondent.

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ORDER DENYING PETITIONER'S  
MOTION FOR RECONSIDERATION [DOC. # 86]

Petitioner Richard Burley filed a motion for reconsideration of the Court's order denying motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner claims that he should have received an evidentiary hearing before this Court rejected his argument that his counsel failed to object to a two-point enhancement assessed to defendant's criminal history calculation. Whether or not to hold a hearing on a § 2255 petition is up to the sound discretion of the district court. See Ross v. United States, 339 F3d 483 (6th Cir. 2003). The district court is to consider the importance of a hearing in light of what the proper resolution of a case requires. Id. at 490 (citing United States v. Todaro, 982 F.2d 1025, 1030 (6th Cir. 1993)). A hearing is required where there is a factual dispute that must be resolved, but a petitioner is not entitled to a hearing "if the files and records of the case conclusively show that he is not entitled to relief." Id. (citations omitted).

In this case there is no factual dispute, therefore a hearing is unnecessary. The Court was able to apply the performance and prejudice test of Strickland v. Washington, 466 U.S. 668 (1984) on the papers filed, without conducting a hearing.

For the foregoing reasons, petitioner's motion for reconsideration is DENIED.

Dated: January 28, 2009

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 28, 2009, by electronic and/or ordinary mail.

s/Marcia Beauchemin  
Deputy Clerk